



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 624154

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective August 7, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed June 14, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed for more than 18 years by an organization that provides services for homeless individuals. At the time of her separation from employment, she was working full time as an administrative assistant. In late 2019, early 2020, and early 2021, the claimant had experiences at work that made her feel like she was being targeted by her supervisor, and caused her to feel uncomfortable and unsafe in the workplace. The claimant spoke with her supervisor and the current vice president of conditional housing about her concerns, and they were addressed by the employer, though not to the claimant's satisfaction. The claimant continued to

feel stress and anxiety, which was accompanied by increased blood pressure.

On or before February 2021, the claimant began counseling and treatment from a licensed clinical social worker and a nurse practitioner, and was placed on a medical leave of absence beginning April 7, 2021. The claimant was initially scheduled to return to work on June 7, 2021, but her leave was extended to August 1, 2021. Prior to that date, the claimant and her healthcare providers discussed extending her leave further, but the claimant was unable to provide the employer or its third party leave administrator with leave extension documentation, because the providers she had been seeing left the medical center, and the claimant was not immediately able to see another professional to receive either an extension of her return to work date, or medical clearance to allow her to return to work.

By email dated August 2, 2021, an employer benefits specialist wrote to the claimant, indicating that her short term disability was approved through July 31, 2021, asking the claimant to confirm a return to work date, and advising that the claimant could not return without medical clearance from her healthcare provider. The claimant responded by email that she was trying to reach out to her healthcare provider, that an extension of her leave was being considered, that she did not have medical clearance to return to work and that she would update the employer as soon as possible. The claimant also called the director of the employer's benefits and compensation department (HH) and advised that she was not yet able to return to work, and would keep the employer notified. Thereafter, the claimant continued to email HH and the benefits specialist advising that as soon as she had the needed medical information and paperwork she would forward it; that she was trying to reach out to her provider regarding a return to work date and would update the employer as soon as possible; that she had been informed that her healthcare provider was no longer with the medical center, and had located a new provider who she was meeting on August 11, and would update the employer regarding her return to work. The benefits specialist responded by thanking the claimant for updating the employer. The claimant continued to update the employer by email every two or three days, and called HH on August 2, 9, and 16 with updates.

By email on August 19, 2021, the claimant advised that she was still trying to get an update on her status, and had her first session with her new provider, who needed information from her previous providers before either extending her leave or clearing her to return to work.

On August 23, 2021, the claimant submitted a letter of resignation to the employer. The claimant resigned on August 23, 2021 because she was afraid the employer was going to conclude that she had abandoned her job and terminate her employment for job abandonment.

At no point did anyone from the employer tell the claimant that she was going to be fired for job abandonment, and the claimant's job was not in jeopardy because she had not yet returned from her medical leave of absence as of August 23, 2021. The employer continued to expect the claimant to return to her job once she had received medical clearance to do so.

OPINION: The credible evidence establishes that the claimant voluntarily resigned from her job on August 23, 2021 because she was afraid the employer was going to discharge her for job abandonment. The claimant testified repeatedly and unequivocally that this fear was the reason for her resignation.

Significantly, the claimant and the employer's witnesses all testified that the employer did not tell the claimant that her job was in jeopardy or that her employment would be terminated if she did not return to work with medical clearance, or provide documentation extending her leave.

Although the employer did advise the claimant on August 2, 2021 that her leave had only been approved through July 31, 2021, thereafter the claimant was in contact with the employer explaining that she had not yet been medically cleared to return to work, that an extension of her leave was being considered, and also explaining the reason for the delay in getting documentation to the employer. At no point prior to August 23 was the claimant told that if she did not return to work or provide documentation by a particular date, her employment was in jeopardy. By contrast, the employer thanked the claimant for her updates, and plainly stated that she needed medical clearance before she could return to work.

There being no dispute that the employer did not threaten or warn the claimant regarding her continuing absence while she was attempting to get documentation to extend her leave or medically clear her to return to work, the claimant's assumption that she would be discharged for job abandonment was speculative and unfounded. The record does not establish that her discharge was imminent or inevitable, or even that it was being considered by the employer. Therefore, the claimant's August 23, 2021 resignation is deemed to be a quit in anticipation of discharge, and a quit without good cause for unemployment

insurance purposes. Accordingly, we conclude that the claimant was separated from employment under disqualifying circumstances.

We have considered the cases cited by the claimant on appeal, and find them factually distinguishable, and therefore inapplicable, since they involve claimants who voluntarily resigned for medical reasons, and not claimants who quit in anticipation of discharge.

DECISION: The decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective August 7, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is modified to be effective August 23, 2021, and as so modified, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER